TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No. 95.

JOHN W. McDONALD, RECEIVER OF THE CAPITAL NATIONAL BANK OF LINCOLN, NEBRASKA, APPELLANT,

vs.

DAVID E. THOMPSON.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

FILED JUNE 26, 1901.

(17,814.)

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a Pleas and proceedings in the United States circuit court of appeals for the eighth circuit, at the December term, A. D. 1899, of said court, begun and held at the United States court-house, in the city of St. Louis, Missouri, on the first Monday in December, to wit, the fourth day of December, A. D. 1899, before the Honorable Henry C. Caldwell, Honorable Walter H. Sanborn, and Honorable Amos M. Thayer, circuit judges.

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

Attest: JOHN D. JORDAN,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

Be it remembered that heretofore, to wit, on the thirtieth day of September, A. D. 1899, a transcript of record, pursuant to an appeal allowed by the circuit court of the United States for the district of Nebraska, was filed in the office of the clerk of the United States circuit court of appeals for the eighth circuit, in the case wherein John W. McDonald, receiver of the Capital National Bank of Lincoln, Nebraska, was appellant, and David E. Thompson was appellee; which said transcript of record is in the words and figures following, to wit:

1 Pleas before the Honorable William H. Munger, judge of the district court of the United States for the district of Nebraska, and sitting in the circuit court of the United States for the district of Nebraska, within the eighth judicial circuit, at the regular November, 1898, term thereof.

Be it remembered, that on the 20th day of May, 1898, bill of complaint was filed in the clerk's office of said circuit court, which said bill of complaint is in words and figures following, to wit:

In the Circuit Court of the United States for the District of Nebraska.

KENT K. HAYDEN, Receiver of the Capital National Bank of Lincoln, Nebraska, Complainant,
vs.
DAVID E. THOMPSON, Respondent. } Bill.

To the judges of the circuit court for the district of Nebraska:

Kent K. Hayden, receiver of the Capital National Bank of Lincoln, Nebraska, brings this his bill against David E. Thompson and thereupon your orator says:

That the said Capital National Bank of Lincoln, Nebraska, is a banking association organized and lately doing business under and by virtue of the laws of the United States, located within the State and district of Nebraska.

That said David E. Thompson is a resident of the city of Lincoln and a resident and citizen of the State of Nebraska.

That on or about the 23rd day of January, 1893, the said Capital National Bank of Lincoln failed, and became and was insolvent, and the Comptroller of the Currency of the United States became and was satisfied of the insolvency of the said Capital National Banking Association; that thereupon, on or about the 6th day of February, 1893, after due examination of the affairs of the said association, the said comptroller appointed one John D. MacFarland receiver of said Capital National Bank of Lincoln; that said John D. MacFarland qualified as such receiver, entered upon the duties of the said office, took possession of said bank, its books, records and assets, and proceeded to close up the said association. That on or about the 4th day of May of the year last aforesaid, the said John D.
2 MacFarland resigned his said office of receiver of said bank, which said resignation was duly accepted by the said comptroller; that thereupon, and afterwards, the plaintiff was duly appointed receiver of the said Capital National Bank of Lincoln by the said Comptroller of the Currency, to succeed the said John D. MacFarland; that on or about the 31st of May, 1893, the plaintiff having been duly appointed as aforesaid duly qualified as such receiver of the Capital National Bank of Lincoln, entered upon the duties of said office, took possession of said bank, its books, records and assets, and proceeded to close up said association, and is now engaged in winding up the affairs of said bank.

Your orator further alleges that on or about the 10th day of June, 1893, the Comptroller of the Currency of the United States at the city of Washington in the District of Columbia, made, issued, declared, signed, sealed with the seal of his office and published his order and proclamation of that date in and by which he declared that: Whereas, upon a proper accounting by the receiver theretofore appointed to collect the assets of the Capital National Bank of Lincoln, Nebraska, and upon a valuation of uncollected assets remaining in his hands, it did appear to the satisfaction of said comptroller that in order to pay the debts of said association it is necessary to enforce the individual liability of the stockholders therefor to the extent thereinafter mentioned as prescribed by sections 5151 and 5234 of the Revised Statutes of the United States; that thereupon, by virtue of the authority in him vested by law, he did thereby make assessment and requisition upon the shareholders of the said Capital National Bank of Lincoln, for three hundred thousand dollars to be paid by them ratably on or before the 10th day of July, 1893; and that he did thereby make demand upon each and every share of the capital stock of said association held or owned by them respectively at the time of its failure, and thereby direct your orator by the name and designation of K. K. Hayden, the receiver theretofore appointed, to take all necessary proceedings by suit or otherwise to enforce to that extent the individual liability of the said shareholders.

Your orator further alleges and represents to your honors that on the 23rd day of April, 1891, and for a long time previous thereto, the said respondent David E. Thompson was the owner of and had standing in his name two hundred and ten shares of the capital

stock of the said Capital National Bank of Lincoln upon the books of said association, and that upon and for a long time previous to the said last-mentioned date the said defendant David E. Thompson was a director of the said Capital National Bank of Lincoln.

3 That on the 23rd day of April, 1891, for a long time prior thereto and thereafter until said bank closed its doors, the said Capital National Bank of Lincoln was in a failing condition, and was in fact insolvent, which was known to said David E. Thompson personally as well as officially, in his capacity as such director.

Your orator further represents to your honors that the said David E. Thompson, respondent herein, being fully advised of and knowing the failing condition and insolvency of the said bank, and in expectation and anticipation of the early and near approaching failure of the said bank, and the necessary enforcement of his liability as a shareholder, and to defraud the said bank, its depositors and crediters out of the security afforded by the law upon the shareholders of national banks, and to render it impossible in the case of the failure of said bank which the said respondent believed and had reason to believe was imminent and could not be long delayed, to place it out of the power of the Comptroller of the Currency to enforce the contingent liability of him, the said respondent David E. Thompson, to contribute not to exceed one hundred cents on the dollar of the par value of the shares of stock owned and held by him as hereinafter stated, in case of the failure of said bank, and its inability to pay its depositors and other creditors out of its ordinary resources, and without resorting to an assessment upon its capital stock in the hands of its shareholders, and for the purpose of avoiding such liability, and cheating, wronging and defrauding the said bank, its depositors and creditors, the Comptroller of the Currency and the receiver of the said bank, of their lawful rights and remedies in the premises, did on or about the 14th day of November 1891, sell and cause to be transferred on the books of the said bank, by proceedings regular in form, but which your orator upon information and belief avers, were, and are, colorable only, and not made in good faith, one hundred and eighty shares of the capital stock of the Capital National Bank of Lincoln, Nebraska, so owned and held by him as aforesaid to Charles W. Mosher and Richard C. Outcalt, whom your orator has been informed and believes, and so charges upon information and belief, are, and were at the date last aforesaid, pecuniarily irresponsible persons, of or from whom the amount of such assessment of one hundred dollars upon each share of the capital stock so owned and held by said respondent David E. Thompson cannot be made by legal process or otherwise.

Your orator further avers that the said David E. Thompson, being fully advised of and knowing the failing condition and insolvency of the said bank, and in expectation and anticipa-

4 tion of the early and near approaching failure of the said bank and its inability to pay its depositors and other creditors out of the ordinary resources and without resorting to an assessment of the capital stock in the hands of its shareholders, and for the purpose of avoiding such liability and cheating, wronging

and defrauding the said bank, its depositors and creditors, the Comptroller of the Currency and the receiver of the said bank of their lawful rights and remedies in the premises, did, on or about the 23rd day of April, 1891, (but the records of said bank erroneously show said sale was made December 10, 1890), sell and cause to be transferred on the books of said bank by proceedings legal in form but which your orator on information and belief avers were colorable only, and not made in good faith, thirty shares of the capital stock of the said Capital National Bank of Lincoln, Nebraska, so owned and held by him as aforesaid, to Esther C. Barton, whom your orator has upon information and belief, and so charges upon information and belief, is and was at the date last aforesaid, not a pecuniarily responsible person, of or from whom the amount of such assessment of one hundred dollars upon each share of the capital stock so owned and held by said respondent David E. Thompson cannot be made by legal process or otherwise.

So that your orator by reason of the pretended sale and transfer of said shares of stock by and from the said respondent David E. Thompson to the said Charles W. Mosher, Richard C. Outcalt, Esther C. Barton and the insolvency of the said transferees, and their pecuniary inability to respond in damages as hereinbefore stated and set forth, your orator is deprived of his remedy at law for the collection of so much of the assessment of three hundred thousand dollars made upon the capital stock of the said Capital national bank, as is applicable to the shares thereof owned and otherwise held by said respondent David E. Thompson; all of which actions and doings of the said respondent are contrary to equity and good conscience and tend to the manifest wrong, injury and oppression of your orator in the premises.

In tender consideration whereof, and forasmuch as your orator is entirely remediless by the strict rules of the common law, and can only have relief in a court of equity where matters of this kind are properly cognizable, to the end therefore, that the said David E. Thompson, respondent herein, may full, true, direct and full answer make to all and singular the matters hereinbefore stated and charged as fully and particularly as though the same were hereinafter repeated, and he thereunto distinctly interrogated, but the answer in or under oath of the said respondent is hereby waived.

5 And the complainant prays that upon consideration thereof your honors find that the said respondent David E. Thompson is the true and lawful owner of the two hundred and ten shares of the capital stock of the Capital national bank hereinbefore mentioned, and that the transfer of the said shares of stock by the said David E. Thompson to the said Charles W. Mosher, Richard C. Outcalt, Esther C. Barton may be set aside, and may adjudge and decree that he pay to your orator the assessment thereon made by the Comptroller of the Currency as hereinbefore stated, to the sum and amount of twenty-one thousand dollars, together with lawful interest on said sum from 10th day of July, 1893, together with

costs of this action and a reasonable solicitor's fee for its conduct and prosecution.

And that your orator may have such other and further relief in the premises as may be agreeable to equity and good conscience.

May it please your honors to grant unto your orator a writ of subpœna issuing out of this honorable court in equity, to be directed to the said David E. Thompson, thereby commanding him under a certain penalty therein to be specified, to be and appear personally before your honors on a certain day, then and there to answer all and singular the premises, and to stand to and perform and abide by such order and decree therein as to your honors shall seem meet, and your orator will ever pray.

COBB & HARVEY,
Solicitors for Complainant.
JOHN H. AMES, *Of Counsel.*

Indorsed: Filed May 20, 1898. Oscar B. Hillis, clerk.

Thereupon afterwards, to wit: on the 20th day of May, 1898, præcipe was filed in said case, which said præcipe is in words and figures following, to wit:

In the Circuit Court of the United States of America for the District of Nebraska.

KENT K. HAYDEN, Receiver of the Capital National Bank of Lincoln, Plaintiff,
vs.
DAVID E. THOMPSON, Defendant. } Præcipe.

To the clerk of said court:

Upon filing the bill herein, you will issue a subpœna in this action for David E. Thompson, respondent, returnable according to law and the practice of this court.

6 The plaintiff prays judgment for $21,000.00 with interest from the 10th day of July, 1893.

Dated May 19, 1898.

COBB & HARVEY,
Solicitors for the Complainant.
JOHN H. AMES, *Of Counsel.*

Indorsed: Filed May 20, 1898. Oscar B. Hillis, clerk.

Thereupon afterwards, to wit, on the 20th day of May, 1898, chancery subpœna was duly issued in said case, and returned and filed on the 14th day of June, 1898, which said chancery subpœna is in words and figures following, to wit:

UNITED STATES OF AMERICA, }
District of Nebraska. }

The President of the United States of America to David E. Thompson, Greeting:

You are hereby commanded to be and appear at rules, to be held at the office of the clerk of the circuit court of the United States, for the district of Nebraska, on the first Monday of July next, at the city of Omaha, then and there to answer the bill of complaint of Kent K. Hayden, receiver of the Capital National Bank of Lincoln, Nebraska, this day filed against you; hence fail not.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 20th day of May, 1898. Issued at my office in the city of Omaha, under the seal of said circuit court, the day and year last aforesaid.

[SEAL.]

OSCAR B. HILLIS, *Clerk*,
By R. C. HOYT, *Deputy*.

MEMORANDUM.—The above-named defendants to enter *their* appearance in this suit in the clerk's office aforesaid, on or before the day at which this writ is returnable; otherwise the bill may be taken *pro confesso*.

OSCAR B. HILLIS, *Clerk*,
By R. C. HOYT, *Deputy*.

COBB & HARVEY,
Complainant's Solicitors.

Attached to said subpœna is the return of the marshal in words and figures following, to wit:

DISTRICT OF NEBRASKA, *ss*:

I hereby certify and return, that on the 30th day of May, 1898, I received this subpœna in chancery, and on the 30th day of May, 1898, I served the same upon the within-named David E. Thompson, at Lincoln, in Lancaster county, State and district of
7 Nebraska, by delivering to and leaving with him a certified copy thereof, with all the indorsements thereon.

GEO. H. THUMMEL,
United States Marshal for the District of Alaska,
By CHAS. W. PEARSALL,
Deputy United States Marshal.

Marshal's costs, $6.00.

Indorsed: Filed June 14, 1898. Oscar B. Hillis, clerk.

Thereupon, afterwards, to wit, on the 4th day of July, 1898, appearance of defendant was filed in said case, which said appearance is in words and figures following, to wit:

In the Circuit Court of the United States for the District of Nebraska.

KENT K. HAYDEN, Receiver of the Capital National Bank of Lincoln, Nebraska, Complainant, *vs.* DAVID E. THOMPSON, Defendant.	204, "T."	In Chancery.

Appearance of Defendant.

The defendant David E. Thompson, by Charles E. Magoon and Halleck F. Rose, his solicitors, hereby enters his appearance herein to the bill of complaint of Kent K. Hayden, receiver of the Capital National Bank, of Lincoln, Nebraska, complainant, and requests that the same be entered of record in said case by the clerk of said court.

Dated July 2, 1898.

CHARLES E. MAGOON AND
HALLECK F. ROSE,
Solicitors for Defendant, David E. Thompson.

Indorsed: Filed Jul- 4, 1898. Oscar B. Hillis, clerk.

Thereupon, afterwards, to wit, on the 18th day of July, 1898, demurrer of David E. Thompson was filed in said case, which said demurrer is in words and figures following, to wit:

In the Circuit Court of the United States for the District of Nebraska.

KENT K. HAYDEN, Receiver of the Capital National Bank of Lincoln, Nebraska, Complainant, *vs.* DAVID E. THOMPSON, Defendant.	204, "T."	In Chancery.

The demurrer of David E. Thompson, defendant, to the bill of complaint of Kent K. Hayden, receiver of the Capital National Bank of Lincoln, Nebraska, the above-named complainant.

8 This defendant, by protestation, not confessing any or all of the matters and things in the plaintiff's bill of complaint contained to be true, in such manner and form as the same is therein set forth and alleged, doth demur to said bill, and for cause of demurrer showeth:

1. That the complainant hath not in and for his said bill made or stated such a case as entitles him, in a court of equity, to any discovery from this defendant, or to any relief against him, as to the matters contained in said bill, or any of such matters.

2. That it appears by the said bill that Charles W. Mosher, Richard C. Outcalt and Esther C. Barton, mentioned and described

in said bill, and the prayer thereof, as transferees of the certain two hundred and ten shares of the capital stock of the Capital national bank, alleged to have been previously held by defendant, and each of them, are necessary parties defendant, without whom no proceedings can be had or taken to annul or set aside such transfer, as by the bill prayed, and there is a defect of parties defendant to said bill.

3. That the plaintiff is not entitled upon said bill to the relief he prays for, because he had a plain and adequate remedy at law.

4. That it appears by the said bill that the cause of action therein set forth and by complainant sought to be enforced against defendant accrued more than four years prior to the commencement of suit and is barred by the statute of limitations.

Wherefore, and for divers other good causes of demurrer appearing in said bill, the defendant doth demur thereto, and humbly demands the judgment of this court whether he shall be compelled to make any further or other answer to the said bill; and prays to be hence dismissed with his costs and charges in this behalf most wrongfully sustained.

DAVID E. THOMPSON, *Defendant*,
By CHAS. E. MAGOON, *His Solicitor*.

Certificate of Counsel.

I hereby certify that I am solicitor and of counsel for the defendant in the above-entitled cause, and that in my opinion the foregoing demurrer of David E. Thompson to the bill of complaint of Kent K. Hayden, receiver of the Capital National Bank of Lincoln, Nebraska, complainant, is well founded in point of law and proper to be filed in the above cause.

CHAS. E. MAGOON,
Solicitor and of Counsel for Defendant.

9 *Verification.*

UNITED STATES OF AMERICA, }
District of Nebraska, } *ss:*

David E. Thompson, being duly sworn, deposes and says that the foregoing demurrer is not interposed to delay the cause or any proceedings therein.

DAVID E. THOMPSON.

Subscribed and sworn to before me this 16th day of July, 1898.
[SEAL.] J. K. HONEYWELL,
Notary Public.

Indorsed: Filed Jul- 18, 1898. Oscar B. Hillis, clerk.

Thereupon afterwards, to wit: on the 17th day of October, 1898, motion substituting Jno. W. McDonald as plaintiff was filed in said case, which said motion is in words and figures following, to wit:

In the Circuit Court of the United States for the District of Nebraska.

KENT K. HAYDEN, Receiver of the Capital National Bank of Lincoln, Complainant,
vs.
DAVID E. THOMPSON, Respondent. } 204, "T."

To the Hon. W. H. Munger, judge of the circuit court of the United States:

You are respectfully given to understand and be informed that Kent K. Hayden, complainant in the above-entitled action, as receiver of the Capital National Bank of Lincoln, died on the 12th day of July, 1898, and that John W. McDonald has been appointed and commissioned as his successor in office as receiver of the Capital National Bank of Lincoln, and has qualified and entered upon the duties of the said office and taken possession of the said trust and is now the duly authorized and qualified receiver of the Capital National Bank of Lincoln and is now actually engaged in winding up the affairs of said bank.

Wherefore, the solicitors of said Capital National Bank of Lincoln, Messrs. Cobb & Harvey and John H. Ames, move the court now for an order that the said John W. McDonald be substituted as complainant in the above entitled action and that the said action
10 be prosecuted hereafter in the name and title of John W. McDonald, receiver of the Capital National Bank of Lincoln, complainant, against David E. Thompson, respondent.

COBB & HARVEY AND
JOHN H. AMES,
Solicitors of Capital National Bank of Lincoln.

Indorsed: Filed Oct. 17, 1898. Oscar B. Hillis, clerk.

Thereupon afterwards, to wit: at the October, 1898, term of said court, and on the 17th day of October, 1898, the following order was signed and filed in said case, and duly entered of record in the journal of the proceedings of said court had on said day, to wit:

KENT K. HAYDEN, Receiver of the Capital National Bank of Lincoln, Complainant,
vs.
DAVID E. THOMPSON, Respondent. } 204, "T."

Now, on this 17th day of October, 1898, being one of the days of the regular October, 1898, term of said court, the court being informed that Kent K. Hayden, complainant in said case, is dead, and that John W. McDonald has been regularly appointed and qualified as receiver of the Capital National Bank of Lincoln as successor of Kent K. Hayden, and that said John W. McDonald has entered upon the performance of the duties of his said trust and is now engaged in winding up the affairs of said bank.

It is therefore ordered that John W. McDonald be substituted as

complainant in the above-entitled cause and that said cause shall be hereafter prosecuted in the name and title of John W. McDonald, receiver of the Capital National Bank of Lincoln, complainant, *vs.* David E. Thompson, respondent.

By the court:

W. H. MUNGER.

Indorsed: Filed Oct. 17, 1898. Oscar B. Hillis, clerk.

Thereupon afterwards, to wit, at the November, 1898, term of said court, and on the 16th day of November, 1898, the following proceedings were had and done in said case, as appears of record in the journal of the proceedings of said court had on said day, to wit:

KENT K. HAYDEN, Receiver,
vs.
DAVID E. THOMPSON. } 204, "T."

The demurrer to the bill herein coming on to be heard, the same is fully argued by the solicitors for the respective parties, duly submitted and by the court taken under advisement.

11 Thereupon afterwards, to wit: at the November 1898 term of said court, and on the 14th day of January, 1899, the following proceedings were had and done in said case, as appear of record on the journal of the proceedings of said court had on said day, to wit:

KENT K. HAYDEN, Receiver,
vs.
DAVID E. THOMPSON. } 204, "T."

Defendant's demurrer to the bill herein, having been heretofore fully argued, duly submitted and by the court taken under advisement, now after due consideration thereof, and being fully advised in the premises, it is—

Ordered by the court that said demurrer be and it hereby is sustained, and plaintiff (—) and hereby is given twenty (20) days from and after this date within which to elect as to whether or not he will stand upon the present bill or replead.

Thereupon afterwards, to wit: at the January 1899 term of said court, and on the 23rd day of January, 1899, the following proceedings were had and done in said case, as appear of record in the journal of the proceedings of said court had on said day, to wit:

KENT K. HAYDEN, Receiver,
vs.
DAVID E. THOMPSON. } 204, "T."

Upon motion of Cobb & Harvey, solicitors for the complainant, it is ordered that leave be, and the same hereby is, granted the plaintiff to file an amended bill herein instanter, which is accordingly done.

Thereupon afterwards, to wit, on the 23rd day of January, 1899, amended bill was filed in said case, which said amended bill is in words and figures following, to wit:

In the Circuit Court of the United States for the District of Nebraska.

JOHN W. MCDONALD, Receiver of the Capital National Bank of Lincoln, Nebraska, Complainant,
vs.
DAVID E. THOMPSON, Respondent.
} Amended Bill.

To the judges of the circuit court for the district of Nebraska:

John W. McDonald, receiver of the Capital National Bank of Lincoln, Nebraska, brings this, his amended bill, against David E. Thompson, and thereupon your orator says:

That the said Capital National Bank of Lincoln, Nebraska, is a banking association organized and lately doing business under
12 and by virtue of the laws of the United States, located within the State and district of Nebraska.

That said David E. Thompson is a resident of the city of Lincoln, and a resident and citizen of the State of Nebraska.

That on or about the 23rd day of January, 1893, the said Capital National Bank of Lincoln failed, and became and was insolvent, and the Comptroller of the Currency of the United States became and was satisfied of the insolvency of the said Capital National Banking Association; that thereupon, on or about the 6th day of February, 1893, after the examination of the affairs of the said association, the said comptroller appointed one John D. MacFarland, receiver of said Capital National Bank of Lincoln; that said John D. MacFarland qualified as such receiver, entered upon the duties of said office, took possession of said bank, its books, records, and assets, and proceeded to close up the said association; that on or about the 4th day of May, of the year last aforesaid, the said John D. MacFarland resigned his said office of receiver of said bank, which said resignation was duly accepted by the said comptroller; that thereupon and afterwards Kent K. Hayden was duly appointed receiver of the said Capital National Bank of Lincoln, by the said Comptroller of the Currency, to succeed the said John D. MacFarland; that on or about the 31st day of May, 1893, said Hayden having been duly appointed as aforesaid, duly qualified as such receiver of Capital National Bank of Lincoln, entered upon the duties of said office, took possession of said bank, its books, records and assets, and proceeded to close up said association, and to wind up the affairs of said bank, and among other official acts commenced this action, by authority of the Comptroller of the Currency; but on the 8th day of July, 1898, said Kent K. Hayden died, and your orator has since been appointed his successor, and is now the duly appointed and qualified receiver of said bank, and is now winding up the affairs of said bank.

Your orator further alleges that on or about the 10th day of June,

1893, the Comptroller of the Currency of the United States, at the city of Washington, in the District of Columbia, made, issued, declared, signed, sealed with the seal of his office, and published his order and proclamation of that date, in and by which he declared that:

Whereas, upon a proper accounting by the receiver theretofore appointed to collect the assets of the Capital National Bank of Lincoln, Nebraska, and upon a valuation of the uncollected assets remaining in his hands, it did appear to the satisfaction of said comp-
13 troller that in order to pay the debts of said association, it is necessary to enforce the individual liability of the stockholders therefor, to the extent thereinafter mentioned, as prescribed by sections 5151 and 5234 of the Revised Statutes of the United States; that thereupon, by virtue of the authority in him vested by law, he did thereby make assessment and requisition upon the shareholders of the said Capital National Bank of Lincoln, for three hundred thousand dollars, to be paid by them ratably on or before the 10th day of July, 1893; and that he did thereby make demand upon each and every share of the capital stock of said association held or owned by them respectively, at the time of its failure, and thereby directed Kent K. Hayden, former receiver by the name and designation of K. K. Hayden, the receiver theretofore appointed, to take all necessary proceedings by suit or otherwise, to enforce to that extent the individual liability of the said shareholders: and has since directed your orator in all things to carry out said duties and instructions.

Your orator further represents to your honors that on the 23rd day of April, 1891, and for a long time previous thereto, the said respondent, David E. Thompson, was the owner of, and had standing in his name, two hundred and ten shares of the capital stock of the said Capital National Bank of Lincoln, upon the books of said association, and that upon and for a long time previous to the said last-mentioned date the said defendant, David E. Thompson, was a director of the said Capital national bank; that said shares were created as a part of the original issue of the capital stock of said bank at the time the said Thompson became the owner thereof, and the same, nor any of them, did not come into his possession or ownership by purchase, transfer or assignment but that he acquired the same as upon subscription to such capital stock, which fact was and is evidenced by the fact that at that time certificates of said shares, partly printed and partly written, and duly signed by the president and cashier, and sealed with the corporate seal of said bank, were issued and delivered to said Thompson, and with his knowledge and consent registered on the books of said bank as belonging to him, and at which time the said Thompson in writing duly receipted for said shares and certificates to said bank, and in writing upon the books of said bank declared himself to be the owner thereof, and of all the same.

That on the 23rd day of April, 1891, and for a long time prior thereto, and thereafter, until said bank closed its doors, the said Capital National Bank of Lincoln was in a failing condition, and

was in fact insolvent, which was known to said David E. Thompson personally, as well as officially, in his capacity as such director.

14 Your orator further represents to your honors that the said David E. Thompson, respondent herein, being fully advised of and knowing the failing condition and insolvency of the said bank, and in expectation and anticipation of the early and near approaching failure of the said bank, and the necessary enforcement of his liability as a shareholder, and to defraud the said bank, its depositors and creditors out of the security afforded by the law upon the shareholders of national banks, and to render it impossible in the case of the failure of said bank, which the said respondent believed and had reason to believe was imminent, and could not be long delayed, to place it out of the power of the Comptroller of the Currency to enforce the contingent liability of him, the said respondent David E. Thompson, to contribute not to exceed one hundred cents on the dollar of the par value of the shares of stock owned and held by him as hereinbefore stated, in case of the failure of said bank and its inability to pay its depositors and other creditors out of the ordinary resources, and without resorting to an assessment upon its capital stock in the hands of its shareholders, and for the purpose of avoiding such liability and cheating, wronging and defrauding the said bank, its depositors and creditors, the Comptroller of the Currency and the receiver of the said bank, of their lawful rights and remedies in the premises, did, on or about the 14th day of November, 1891, sell and cause to be transferred on the books of the said bank, by proceedings regular in form, but not made in good faith, one hundred and eighty-five shares of the said capital stock of the Capital National Bank of Lincoln, Nebraska, so acquired, owned and held by him as aforesaid, to Charles W. Mosher, and Richard C. Outcalt, whom your orator has been informed and believes, and so charges upon information and belief, are, and were at the date last aforesaid, pecuniarily irresponsible persons, of or from whom the amount of such assessment of one hundred dollars upon each share of the capital stock so owned and held by said respondent, David E. Thompson, cannot be made by legal process or otherwise. Your orator further avers that the said David E. Thompson, being fully advised of and knowing the failing condition and insolvency of the said bank, and in expectation and anticipation of the early and near approaching failure of the said bank and its inability to pay its depositors and other creditors out of the ordinary resources and without resorting to an assessment of the capital stock in the hands of its shareholders, and for the purpose of avoiding such liability and cheating, wronging and defrauding the said bank, its depositors and creditors, the Comptroller of the Currency and the receiver of the said bank, of their lawful rights and remedies in the premises, did, on or

15 about the 23rd day of April, 1891 (but the records of said bank erroneously show said sale was made December 10, 1890) sell and caused to be transferred on the books of said bank, by proceedings legal in form, but not made in good faith, thirty

shares of the said capital stock of the Capital National Bank of Lincoln, Nebraska, so acquired, owned, and held by him as aforesaid, to Esther C. Barton, whom your orator has upon information and belief, and so charges upon information and belief, is and was at the date last aforesaid, not a pecuniarily responsible person, of or from whom the amount of such assessment of one hundred dollars upon each share of the capital stock so owned and held by said respondent David E. Thompson, cannot be made by legal process, or otherwise.

So that your orator, by reason of the sale and transfer of the said shares of stock by and from the said respondent, David E. Thompson, to the said respondents Charles W. Mosher, Richard C. Outcalt, Esther C. Barton, and the insolvency of the said transferees, and their pecuniary inability to respond in damages as hereinbefore stated and set forth, your orator is deprived of his remedy at law for the collection of so much of the assessment of three hundred thousand dollars made upon the capital stock of the said Capital national bank as is applicable to the shares thereof owned and otherwise held by said respondent, David E. Thompson; all of which actions and doings of the said respondent are contrary to equity and good conscience, and tend to the manifest wrong, injury and oppression of your orator in the premises.

In tender consideration whereof, and forasmuch as your orator is entirely remediless by the strict rules of the common law, and can only have relief in a court of equity where matters of this kind are properly cognizable, to the end therefore that the said David E. Thompson, respondent herein, may full, true, direct answer make to all and singular the matters hereinbefore stated and charged, as fully and particularly as though the same were hereinafter repeated, and they thereunto distinctly interrogated, but the answer in or under oath of the said respondents is hereby waived.

And the complainant prays that upon consideration thereof, your honors find that the said respondent, David E. Thompson, is justly liable for the payment of the assessment heretofore made on said stock, as though he had not paid the same, and was still the true and lawful owner of the said shares of the capital stock of the Capital national bank hereinbefore mentioned, and that the transfer of the said shares of stock by the said David E. Thompson, to the said Charles W. Mosher, Richard C. Outcalt and Esther C. Barton,
16 be adjudged by this court as not affecting or diminishing the liability of defendant, and that it may adjudge and decree that he pay to your orator the assessment thereon made by the Comptroller of the Currency as hereinbefore stated, to the sum and amount of $21,000.00, together with lawful interest on said sum from July 10, 1893, together with costs of this action and a reasonable solicitor's fee for its conduct and prosecution; and that your orator may have such other and further relief in the premises as may be agreeable to equity and good conscience.

May it please your honors to grant unto your orator a writ of subpœna, issuing out of this honorable court in equity, to be directed to the said David E. Thompson, thereby commanding him, under a

certain penalty therein to be specified, to be and appear personally before your honors on a certain day, then and there to answer all and singular the premises, and to stand to and perform and abide by such order and decree therein as to your honors shall seem meet.

And your orator will ever pray.

A. E. HARVEY,
Solicitor for Complainant.
JOHN H. AMES, *Of Counsel.*

Indorsed: Filed Jan. 23, 1899. Oscar B. Hillis, clerk.

Thereupon, afterwards, to wit, on the 7th day of February, 1899, demurrer to amended bill was filed in said case, which said demurrer is in words and figures following, to wit:

In the Circuit Court of the United States for the District of Nebraska.

JOHN W. MCDONALD, Receiver of the Capital National Bank of Lincoln, Nebraska, Complainant,
vs.
DAVID E. THOMPSON, Respondent.
} 204, "T." In Chancery.

The demurrer of David E. Thompson, respondent, to the amended bill of complaint of John W. McDonald, receiver of the Capital National Bank of Lincoln, Nebraska, the above-named complainant.

This defendant by protestation not confessing any or all of the matters and things in the plaintiff's bill of complaint to be true, in such manner and form as the same is therein set forth and alleged, doth demur to said bill, and for cause of demurrer showeth:

1. That the complainant hath not in and (for) his said amended bill made or stated such a case as entitled him, in a court of
17 equity, to any discovery from this defendant, or to any relief against him, as to the matters contained in said bill, or any of such matters.

2. That it appears by the said amended bill that Charles W. Mosher, Richard C. Outcalt and Esther C. Barton, mentioned and described in said amended bill, as transferees of the certain two hundred and ten shares of the capital stock of the Capital national bank alleged to have been previously held by defendant, and each of them, are necessary parties defendant, without whom no relief can be had in equity against said alleged transfer, and that there is therefore a defect of parties defendant to said amended bill.

3. That the complainant is not entitled upon said amended bill to the relief he prays for, because he had a plain and adequate remedy at law.

4. That the complainant is not entitled upon said amended bill to the relief he prays for, because it appears by the said amended bill that the cause of action therein set forth and by complainant

sought to be enforced against defendant, accrued more than four years prior to commencement of suit, and is therefore barred by the statute of limitations.

Wherefore, and for divers other good causes of demurrer appearing in said amended bill, the defendant doth demur thereto, and humbly demands the judgment of this court whether he shall be compelled to make any further or other answer to the said amended bill; and prays to be hence dismissed with his costs and charges, in this behalf most wrongfully sustained.

DAVID E. THOMPSON, *Respondent,*
By CHAS. E. MAGOON,
HALLECK F. ROSE, *His Solicitors.*

Certificate of Counsel.

I hereby certify that I am solicitor and counsel for the respondent in the above-entitled cause, and that in my opinion the foregoing demurrer of David E. Thompson to the amended bill of complaint of John W. McDonald, receiver of the Capital National Bank of Lincoln, Nebraska, complainant, is well founded in point of law, and proper to be filed in the above cause.

HALLECK F. ROSE,
Solicitor and Counsel for Respondent.

18 *Verification.*

UNITED STATES OF AMERICA, }
State and District of Nebraska, Lancaster County. }

David E. Thompson being duly sworn, deposes and says that the foregoing demurrer is not interposed to delay the cause or any proceedings therein.

DAVID E. THOMPSON.

Subscribed in my presence and sworn to before me this 6th day of February, 1899.

[SEAL.] J. K. HONEYWELL,
Notary Public.

Indorsed: Filed Feb. 7, 1899. Oscar B. Hillis, clerk.

Thereupon afterwards, to wit: at the January 1899 term of said court, and on the 28th day of February, 1899, the following proceedings were had and done in said case, as appear of record upon the journal of the proceedings of said court had on said day, to wit:

KENT K. HAYDEN, Receiver of Capital National Bank, Lincoln,
vs.
DAVID E. THOMPSON. } 204, "T."

This day come the parties herein by their respective solicitors and submit to the court a demurrer to the amended bill.

Thereupon afterwards, to wit: at the regular November 1898 term of said court, and on the 4th day of April, 1899, the following proceedings were had and done in said case, as appear of record on the journal of the proceedings of said court had on said day, to wit:

K. K. HAYDEN, Receiver,
vs.
DAVID E. THOMPSON. } 204, "T."

The demurred to the amended bill, having been heretofore fully argued by the attorneys for the respective parties, duly submitted and by the court taken under advisement; now, after due consideration thereof, and being fully advised concerning the same, it is hereby—

Ordered by the court that said demurrer be, and it hereby is, sustained; and it is considered, ordered, adjudged and decreed, that the complainant's bill be, and it hereby is, dismissed, and the defendant do have and recover of and from the complainant, his costs and disbursements herein to be taxed and that he have execution therefor.

Thereupon afterwards, to wit: on the 5th day of April, bill of costs was filed in said case, which bill of costs is in words and figures following, to wit:

19 In the Circuit Court of the United States for the District of Nebraska.

Bill of Costs Taxed in Favor of the Defendant in the Case of Kent K. Hayden, Rec., vs. David E. Thompson, No. 204, "T."

Clerk's fees (for items see appearance docket)	$6.00
Attorney's fees—*i. e.*, docket fee $20.00	20.00
Total	$26.00

UNITED STATES OF AMERICA,
District of Nebraska, } *ss:*

I, Oscar B. Hillis, clerk of the circuit court of the United States for said district of Nebraska, do hereby certify that the above and foregoing is a true statement of the costs taxed and allowed in favor of defendant in the above-entitled case, and that the same are just and legal as I verily believe.

Witness my hand and the seal of said court this 5th day of April, 1899.

[SEAL.]

OSCAR B. HILLIS, *Clerk,*
By R. C. HOYT, *Deputy.*

Indorsed: Filed Apr. 5, 1899. Oscar B. Hillis, clerk.

Thereupon afterwards, to wit, on the 27th day of September, 1899, a petition for an allowance of appeal and assignment of error was filed in said case, which said petition and assignment is in words and figures following, to wit:

In the Circuit Court of the United States within and for the District of Nebraska.

JOHN W. McDONALD, Receiver of the Sapital National Bank of Lincoln,
against
DAVID E. THOMPSON.

Petition for an Allowance of Appeal and Assignment of Error.

Your petitioner, the complainant in the above-entitled cause, by direction of the Comptroller of the Currency would respectfully represent and show that in the above-entitled case pending in the United States circuit court in and for the district of Nebraska, 8th circuit, there was entered on the 4th day of April, 1899, of said court a final decree greatly to the prejudice and injury of your petitioners, which said decree is erroneous and inequitable in many particulars.

20 Wherefore, in order that your petitioner may obtain relief in the premises and have opportunity to show the errors complained, your petitioner prays that he may be allowed an appeal in said case to the United States circuit court of appeals, and that the proper orders may be made. Your petitioner shows he is an officer of the United States and under section 1001 of the Revised Statutes of the United States not required to give bond upon appeal or security for costs in this case.

Your petitioner makes the following assignment of errors:

First. The court erred in sustaining the demurrer of the respondent.

Second. The court erred in deciding that this complainant did not have the right to maintain this action against the respondent.

Third. The court erred in dismissing the complainant's said action.

Fourth. The court erred in entering judgment in favor of the respondent and against the complainant.

Dated September 27, 1899.

JOHN H. AMES,
A. E. HARVEY,
Attorneys for Complainant.

Appeal allowed.
W. H. MUNGER, *Judge.*

Indorsed: Filed Sep. 27, 1899. Oscar B. Hillis, clerk, by R. C. Hoyt, deputy.

Thereupon, afterwards, to wit, on the 27th day of September, 1899, a citation was duly signed in said case, and returned and filed on the 29th day of September, 1899, with proof of service endorsed thereon the following of which is the original:

The United States of America to David E. Thompson, Greeting:

You are hereby cited and admonished to be and appear in the United States circuit court of appeals for the eighth circuit, at the city of St. Louis, Missouri, sixty days from and after the day this citation bears date, pursuant to an appeal allowed and filed in the clerk's office of the circuit court of the United States for the district of Nebraska, wherein, John W. McDonald, receiver of the Capital National Bank of Lincoln, Nebraska, is appellant, and you are appellee to show cause, if any there be, why the judgment
21 rendered against the said appellant, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness the Honorable William H. Munger, judge of the circuit court of the United States for the district of Nebraska, this 27th day of September, in the year of our Lord one thousand eight hundred and ninety-nine.

WM. H. MUNGER,
United States District Judge for the District of Nebraska.

STATE OF NEBRASKA, } ss:
Lancaster County, }

Andrew E. Harvey, being by me first duly sworn, says that at Lincoln, Nebraska, on the 28th day of September, 1899, he served the within citation upon Halleck F. Rose, one of the solicitors of record for the respondent Thompson in the within entitled cause by delivering to and leaving with the said Rose, personally, a true and correct copy of the same.

ANDREW E. HARVEY.

Subscribed in my presence and sworn to before me this 28th day of September, A. D. 1899.

[NOTARIAL SEAL.] EDWIN CAMACK,
Notary Public.

No. 204, "T." United States circuit court, district of Nebraska. John W. McDonald *vs.* David E. Thompson. Citation. Filed Sep. 29, 1899. Oscar B. Hillis, clerk, by R. C. Hoyt, deputy clerk.

UNITED STATES OF AMERICA, } ss:
District of Nebraska, }

I, Oscar B. Hillis, by R. C. Hoyt, deputy clerk of the circuit court of the United States for the district of Nebraska, do hereby certify that the foregoing pages from one (1) to thirty-seven (37) inclusive, contain true and faithful transcripts of all the pleadings, process and proceedings of record and on file in said court, in the

case of John W. McDonald, receiver of the Capital National Bank of Lincoln *vs.* David E. Thompson, No. 204 "T," and that a copy of the citation duly certified has been lodged and remains in my said office as such clerk.

Witness my hand and seal of said circuit court of Omaha, in said district, this 29th day of September, A. D. 1899.

Seal United States Circuit Court, District of Nebraska.

OSCAR B. HILLIS, *Clerk*,
By R. C. HOYT, *Deputy*.

[Cancelled 10c. U. S. rev. stamp.]

Filed Sep. 30, 1899.

JOHN D. JORDAN, *Clerk*.

22 (*Appearance for Appellant.*)

And on the thirtieth day of September, A. D. 1899, an appearance of counsel for the appellant was filed in the clerk's office of said circuit court of appeals in the words and figures following:

United States Circuit Court of Appeals, Eighth Circuit, May Term, 1899.

JOHN W. McDONALD, Receiver of the Capital National Bank of Lincoln, Appellant,
vs.
DAVID E. THOMPSON. } No. 1335.

The clerk will enter my appearance as counsel for the appellant.

JOHN H. AMES.
ANDREW E. HARVEY.

(Endorsed:) U. S. circuit court of appeals, eighth circuit, May term, 1899. No. 1335. John W. McDonald, receiver, &c., appellant, *vs.* David E. Thompson. Appearance. Filed Sept. 30, 1899. John D. Jordan, clerk. John H. Ames, Andrew E. Harvey, counsel for appellant.

(*Appearance for Appellee.*)

And on the thirtieth day of October, A. D. 1899, an appearance of counsel for the appellee was filed in the clerk's office of said circuit court of appeals in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, May Term, 1899.

JOHN W. McDONALD, Receiver of the Capital National Bank of Lincoln, Neb., Appellant,
vs.
DAVID E. THOMPSON. } No. 1335.

The clerk will enter my appearance as counsel for the appellee.

CHARLES E. MAGOON.
HALLECK F. ROSE.

(Endorsed:) U. S. circuit court of appeals, eighth circuit, May term, 1899. No. 1335. John W. McDonald, receiver, &c., appellant, *vs.* David E. Thompson. Appearance. Filed Oct. 30, 1899. John D. Jordan, clerk. Chas. E. Magoon, Halleck F. Rose, counsel for appellee.

23 (*Submission.*)

And on the twenty-fifth day of January, A. D. 1900, in the record of the proceedings of said circuit court of appeals is an order of submission in said cause in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, December Term, 1899.

THURSDAY, *January* 25, 1900.

JOHN W. McDONALD, Receiver of the Capital National Bank of Lincoln, Appellant,
vs.
DAVID E. THOMPSON. } No. 1335.

Appeal from the circuit court of the United States for the district of Nebraska.

This cause having been called for hearing in its regular order, argument was commenced by Mr. Andrew E. Harvey in behalf of the appellant, continued by Mr. Halleck F. Rose for the appellee, and concluded by Mr. Andrew E. Harvey for the appellant.

Thereupon the cause was submitted to the court upon the transcript of record from said circuit court and the briefs of counsel filed herein.

(*Opinion.*)

And on the twenty-first day of March, A. D. 1900, an opinion of said United States circuit court of appeals was filed in said cause in the following words, to wit:

24 United States Circuit Court of Appeals, Eighth Circuit, December Term, A. D. 1899.

JOHN W. McDONALD, Receiver of the Capital National Bank of Lincoln, Nebraska, Appellant,
vs.
DAVID E. THOMPSON, Appellee. } No. 1335. Appeal from the Circuit Court of the United States for the District of Nebraska.

Mr. Andrew C. Harvey (Mr. John H. Ames was with him on the brief) for appellant.

Mr. Halleck F. Rose for appellee.

Before Caldwell, Sanborn, and Thayer, circuit judges.

On the 23d day of January, 1893, the Capital National Bank of Lincoln, Nebraska, failed, and on the 6th day of February, 1893, the

Comptroller of the Currency appointed a receiver for the same. On the 10th day of June, 1893, the Comptroller ordered an assessment on the stockholders of the bank to the amount of the par value of the shares payable July 10, 1893. This suit in equity was brought on the 20th day of May, 1898, by Kent K. Hayden as receiver of the bank, the predecessor in office of the present receiver and appellant, against David E. Thompson the appellee, as a shareholder in the bank, to recover the amount assessed upon his stock by the order of the Comptroller of the Currency. The bill alleged the defendant had, in anticipation of the failure of the bank, fraudulently transferred his shares to persons financially irresponsible for the purpose of escaping his liability as a stockholder. The defendant demurred to the bill and to an amended bill upon the ground among others, that the cause of action was barred by the statute of limitations of the State of Nebraska. The court sustained the demurrer and dismissed the bill, and thereupon the receiver brought the case by appeal to this court.

CALDWELL, circuit judge, after stating the case as above, delivered the opinion of the court:

The demurrer raises several questions, but it is unnecessary to pass on any other than that based on the plea of the statute of limitations. The provisions of the Nebraska statute of limitations applicable to the case read as follows:

25 "SECTION 5. Civil actions can only be commenced within the time prescribed in this title after the cause of action shall have accrued.

"SECTION 11. Within four years an action upon a contract not in writing express or implied; an action upon a liability created by statute other than a forfeiture or penalty." Compiled Statutes of Nebraska.

Whether the liability of a stockholder is treated as an express or implied contract not in writing or as a liability created by statute—and confessedly it is one or the other—an action founded thereon, whether at law or in equity, is barred under the Nebraska statute in four years. Carroll *v.* Green, 92 U. S., 509; Terry *v.* McLure, 103 U. S., 442; Campbell *v.* Haverhill, 155 U. S., 610; Thompson *v.* German Ins. Co., 76 Fed., 892; Butler *v.* Poole, 44 Fed., 586; Van Pelt *v.* Gardner, 54 Neb., 701, 705; Glenn *v.* Marbury, 145 U. S., 499.

In this case the cause of action accrued on the 10th day of July, 1893, the day fixed by the Comptroller of the Currency for the payment of the assessment, and suit was not brought until the 20th day of May, 1898, more than four years after the cause of action accrued.

The circuit court rightly decided that upon the face of the bill the cause of action was barred, and its decree dismissing the bill is affirmed.

Filed March 21, 1900.

26 (*Decree.*)

And on the twenty-first day of March, A. D. 1900, in the record of the proceedings of said circuit court of appeals is a decree in said cause in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, December Term, 1899.

WEDNESDAY, *March* 21, 1900.

JOHN W. McDONALD, Receiver of the Capital National Bank of Lincoln, Nebraska, Appellant,
vs.
DAVID E. THOMPSON. } No. 1335.

Appeal from the circuit court of the United States for the district of Nebraska.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the district of Nebraska and was argued by counsel.

On consideration whereof it is now here ordered, adjudged, and decreed by this court that the decree of the said circuit court in this cause be, and the same is hereby, affirmed with costs, and that David E. Thompson have and recover against John W. McDonald, receiver of the Capital National Bank of Lincoln, Nebraska, the sum of twenty dollars for his costs herein and have execution therefor.

March 21, 1900.

(*Petition for Appeal and Assignment of Errors.*)

And on the sixth day of June, A. D. 1900, a petition for appeal and assignment of errors was filed in the clerk's office of said circuit court of appeals, in said cause, in the words and figures following, to wit:

In the United States Circuit Court of Appeals for the 8th Circuit.

JOHN W. McDONALD, Receiver of the Capital National Bank of Lincoln, Nebraska, Appellant,
against
DAVID E. THOMPSON, Appellee.

Petition for the Allowance of an Appeal to the United States Supreme Court.

27 To the honorable the judges of the said court:

The above-named appellant, complainant in the court below, by the direction and pursuant to the instruction of the Comptroller of the Currency of the United States, prays your honors to grant him an appeal to the Supreme Court of the United States from the judg-

ment of the court in the above-entitled case, rendered on the — day of ——, A. D. 1900, affirming the judgment therein of the United States circuit court for the district of Nebraska, by which last-mentioned judgment the bill of complaint of the appellant was dismissed and the appellant adjudged to pay the costs of this suit.

And as reasons for and for the purposes of said appeal your petitioner, John W. McDonald, appellant and complainant aforesaid, by his solicitors, John H. Ames and Andrew E. Harvey, now here makes and assigns the following assignments of errors, prejudicial to him, which he alleges to have intervened in and to be disclosed by the records, proceedings, and judgment in said cause in this court:

First.

This court erred in affirming the judgment of the circuit court sustaining the demurrer of the respondent to your petitioner's amended bill of complaint and dismissing said amended bill and adjudging that your petitioner pay the costs in said suit.

Second.

This court erred in affirming the judgment of the circuit court by which it was decided that your petitioner was not entitled to have or maintain his said amended bill of complaint.

Third.

This court erred in holding and deciding that your petitioner's amended bill of complaint is founded upon either a statutory liability or obligation or upon an implied contract or upon an express contract not in writing.

Fourth.

This court erred in holding and deciding that your petitioner's amended bill of complaint or the cause of action set forth therein is or was at the time of the beginning of this action barred by the statute of limitations of the State of Nebraska.

28 Wherefore *m*our petitioner prays an appeal, as aforesaid, to the Supreme Court of the United States, and respectfully suggests to your honors that he is an officer of the United States, and as such exempted by section 1001 of the Revised Statutes of the United States from giving a bond upon appeal or for security for costs in this suit.

JOHN W. McDONALD,
By JOHN H. AMES AND
ANDREW E. HARVEY,
His Solicitors.

(Endorsed:) No. 1335. In the United States circuit court of appeals for the 8th circuit. John W. McDonald, receiver of the Capital National Bank of Lincoln, Nebraska, appellant, against David E.

Thompson, appellee. Petition for appeal and assignment of errors. Filed Jun- 6, 1900. John D. Jordan, clerk. John H. Ames & Andrew E. Harvey, att'ys for appellant.

(*Order Allowing Appeal.*)

And on the sixth day of June, A. D. 1900, in the record of the proceedings of said circuit court of appeals is an order allowing an appeal in said cause in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, May Term, 1900.

WEDNESDAY, *June* 6, 1900.

JOHN W. McDONALD, Receiver of the Capital National Bank of Lincoln, Nebraska, Appellant,
vs.
DAVID E. THOMPSON. } No. 1335.

Appeal from the circuit court of the United States for the district of Nebraska.

This cause came on to be heard upon the petition of counsel for the appellant for an order allowing an appeal to the Supreme Court of the United States from the decree of this court entered in said cause on the 21st day of March, 1900.

On consideration whereof it is now here ordered by this court that said appeal be, and the same is hereby, allowed, as prayed for in said petition.

29 (*Citation.*)

And on the ninth day of June, A. D. 1900, a citation was filed in the clerk's office of said circuit court of appeals in said cause, the original of which, with the proof of service endorsed thereon, is hereto attached and herewith returned.

30 The United States of America to David E. Thompson, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, at the city of Washington, D. C., thirty days from and after the day this citation bears date, pursuant to an appeal allowed and filed in the clerk's office of the United States circuit court of appeals for the eighth circuit, wherein John W. McDonald, receiver of the Capital National Bank of Lincoln, Nebraska, is appellant, and you are appellee, to show cause, if any there be, why the decree rendered against the said appellant, as in said appeal mentioned, should not be corrected and why speedy justice should not be done the parties in that behalf.

Witness the Honorable Amos M. Thayer, judge of the United

States circuit court of appeals for the eighth circuit, this sixth day of June, in the year of our Lord one thousand nine hundred.

AMOS M. THAYER,
Judge of the United States Circuit Court of Appeals for the Eighth Circuit.

[Endorsed:] No. 1335. Supreme Court of the United States. John W. McDonald, as receiver, etc., appellant, *vs.* David E. Thompson. Citation on appeal. Filed Jun- 9, 1900. John D. Jordan, clerk.

STATE OF NEBRASKA, }
Lancaster County, } *ss:*

Andrew E. Harvey, being by me first duly sworn, says that at Lincoln, Nebraska, on the seventh day of June, A. D. 1900, he served the within citation upon Halleck F. Rose, Esq., one of the solicitors of record for the respondent, David E. Thompson, in the within entitled cause, by delivering to and leaving with the said Halleck F. Rose personally, in his law office in said city, a true and correct copy of this citation.

ANDREW E. HARVEY.

Subscribed in my presence and sworn to before me this seventh day of June, A. D. 1900.

{ Notarial Seal of S. L. Geisthardt, Lincoln, Lancaster County, Nebraska. }

S. L. GEISTHARDT,
Notary Public.

Commission expires Sept. 11, 1905.

31 United States Circuit Court of Appeals, Eighth Circuit.

I, John D. Jordan, clerk of the United States circuit court of appeals for the eighth circuit, do hereby certify that the foregoing thirty pages contain full, true, and complete copies of all the pleadings, proceedings, and record entries, including the opinion of said circuit court of appeals, in the case of John W. McDonald, receiver of the Capital National Bank of Lincoln, Nebraska, appellant, *vs.* David E. Thompson, appellee, No. 1335, December term, 1899, as fully as the same remain of record and on file in my office. I do further certify that the original citation with the proof of service endorsed thereon is hereto attached and herewith returned.

I do further certify that on the nineteenth day of May, A. D. 1900, a mandate was issued out of the clerk's office of said circuit court of appeals directed to the judges of the circuit court of the United States for the district of Nebraska, in accordance with the decree of said circuit court of appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States circuit court of appeals for the eighth

circuit, at the city of St. Louis, Missouri, this nineteenth day of June, A. D. 1900.

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

JOHN D. JORDAN,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

Endorsed on cover: File No., 17,814. U. S. C. C. of appeals, 8th circuit. Term No., 95. John W. McDonald, receiver of the Capital National Bank of Lincoln, Nebraska, appellant, *vs.* David E. Thompson. Filed June 26, 1900.